

# MANDATORY FOIA TRAINING - FY2019

## FREEDOM OF INFORMATION ACT (FOIA) OVERVIEW

### Text Alternative Version

*NOTE: This text alternative version is intended for employees with disabilities who use Assistive Technology. Since completion of the text version cannot be automatically tracked, please notify your supervisor once you have read and understood the course, to ensure that you receive proper credit for completing the training.*

### Overview

The FY2019 Mandatory Freedom of Information Act (FOIA) Training is an overview of concepts and terms that you may encounter if you are requested to assist in processing a FOIA request. Acting Administrator Wheeler stated his commitment to the FOIA process in his email message dated July 30, 2018, titled “Public Participation and Transparency in EPA Operations.” There are several knowledge checks throughout the training. For detailed information on FOIA exemptions please review the FY 2018 Mandatory FOIA Training.

### This Training Covers

- What is a FOIA request?
- What records are subject to FOIA?
- Categories of requesters
- What is a proper FOIA request?
- Practical application
- Determination of a proper FOIA request
- Processing Time of FOIA requests
- Tracks of FOIA requests
- Requests about publicly available information
- Types of responses to FOIA requests

### What Is a FOIA Request?

- A FOIA request is a written request for agency records submitted through FOIAonline; regular mail or overnight mail.
- Verbal requests are not FOIA requests. You are not required to answer questions under the FOIA.
- All EPA FOIA requests are processed through [FOIAonline](#). If you need an account please contact your FOIA Officer or Coordinator. A list is available at: <http://intranet.epa.gov/foia/>.

### What Records Are Subject to FOIA?

#### Agency Records

The FOIA applies to “federal agency records” that exist and can be located in agency files. The Supreme Court has articulated a basic two-part test for determining what constitutes “[agency records](#)” under the Freedom of Information Act (FOIA).

“Agency records” are records that are 1) either created or obtained by an agency, and 2) under agency control at the time of the FOIA request. In distinguishing between “personal” and “agency” records, you examine the totality of the circumstances. Factors to consider when differentiating “personal records” from “Agency records” include:

- The purpose for which the record was created;
- The degree of integration of the record into the agency’s filing systems; and
- The extent to which the record’s author or other employees used the record to conduct agency business.

## What Records Are Subject to FOIA?

### Format of Agency Records

The form of agency records can include any type of recorded information that is in the possession and under the control of the agency at the time that the FOIA request was received, such as:

- paper documents;
- e-mails;
- video or audio tapes;
- photos;
- text or other instant messages (e.g., Skype chat);
- electronic files maintained on a computer, on a server, a storage medium (e.g., thumb drive or CD), or in the cloud; and
- electronic records maintained in SharePoint, OneDrive, and other EPA collaboration tools.

## Categories of Requesters

### Three Categories

Any person may file a FOIA request. The requesters are classified into three categories to help determine the [fees](#), if any, the agency may apply for processing a FOIA request.

#### Commercial Use Requesters

These requesters are charged all three types of fees: search, review, and duplication.

#### Educational institutions, Noncommercial Scientific Institutions, and Representatives of the News Media

These requesters are only charged duplication fees, but receive the first 100 pages of paper copies for free.

#### Other Requesters

These requesters are charged search fees and duplication fees, but receive the first 2 hours of search and the first 100 pages of paper copies for free.

## Categories of Requesters

### Charging Fees

After applying the discounts, if any fees remain, please refer to the [Department of Justice fee tree](#).

## Knowledge Check

What is a proper request?

- A. In writing.
- B. Includes fee commitment.
- C. Personal meeting notes.
- D. A and B
- E. A and C

## What Is a Proper FOIA Request?

Pursuant to 5 USC §552(a)(3)(A), a proper FOIA request:

- “Reasonably describes” the records sought;
  - A reasonably described FOIA request is one that sufficiently describes the records sought so that an agency employee familiar with the subject matter can locate the records within a “reasonable amount of effort.”
- A proper FOIA request is made in writing and submitted through FOIAonline, regular mail, or overnight mail.
- And is made in accordance with EPA FOIA Regulations.
  - EPA’s FOIA Regulations at 40 C.F.R. § 2.102(c) states that the “written request should reasonably describe the records you are seeking in such a way that will permit EPA employees to identify and locate them. When possible, your request should include specific information about each record sought such as date, title or name, author, recipient, and subject matter.”

The FOIA does not require staff to do the following:

- Create new records (Database downloads are not new records);
- Answer questions, interrogatories, or perform research to answer requests;
- Explain or justify Agency decisions;
- Produce purely personal records; or
- Hold a request open that seeks records which EPA may create in the future.

If the FOIA request is improper then staff must give the requester the opportunity to clarify an improper request. There is a letter template available on the [FOIA Intranet site](#). Here are some examples of improper requests: all of the Administrators tweets (Which Administrator? Is there a topic or date range?)

Practice Tip: Many requesters appreciate the invitation to clarify so that they do not have to review records that are not relevant to their case or project.

## Knowledge Checks

What primarily makes a request a proper FOIA request?

- A. It should be about agency records, i.e. records that are created or obtained by an agency and under the agency’s control at the time of the request.
- B. It should reasonably describes the records sought.
- C. It should be made in accordance with EPA regulations.
- D. All of the above.

Which of the following is a proper FOIA request?

- A. “Does EPA have files on ...”.
- B. “All of the emails between two named agency officials on the following subject...”.
- C. “What is the basis for the Agency’s decision to...”.
- D. “Provide the final XYZ Report when it is finished next month”.
- E. None of the above.

## Determination of a Proper FOIA Request: Practical Application

Broad FOIA requests or the burden on the agency alone does not make a request improper – requests can be very large, yet still be proper.

If you are assigned to process a broad FOIA request, follow these steps:

Instead, focus on whether the request sufficiently describes the records sought such that there is enough information to develop and implement a search plan. If not, the request requires clarification with the requester.

Clarify and narrow, don’t close! (40 C.F.R. 2.102 (c))

Contact the requester by phone or email/letter to give them the opportunity to narrow the request. Most requesters are not familiar with how EPA records are organized and will benefit from your expertise to avoid receiving extraneous records. Start with subject matter, date range, list of custodians, or record type (Outlook files).

Follow up by email or letter if you contact the requester by phone. Document your phone call in the Comments section of FOIAonline.

Practice Tip: Remind the requester that they may make another request on the same subject if the responsive records do not meet their needs.

To know if a clarification is needed, ask yourself the following:

- Does the request sufficiently describe the records sought such that you know where to search for responsive records?
- Are the following elements provided: records type(s), date range, custodian(s), search terms?
- Can I articulate a search plan of action for the records sought?

If the answer to these questions is yes, develop and implement a search plan for responsive records.

However if the answer is no, contact the requester to clarify and document any communication.

## Knowledge Check

What are the elements to consider when trying to narrow a FOIA request?

- A. Type(s) of records.
- B. Date range(s).
- C. Program Office(s)/Position(s)/Custodian(s).
- D. Subject matter(s)/Search Term(s).
- E. All of the 4 elements above.

## Processing Time of FOIA

There are 3 timeframes for processing a FOIA request:

- 1) Statutory time limit: Under FOIA, the agency has 20 working days to process a request.
- 2) 10-day extension for unusual circumstances: If additional time is needed beyond the 20 working days, the requester should be provided a written notice invoking a 10-day extension for “unusual circumstances.” This will give a total of 30 days to respond to the request.
- 3) Extension beyond 30 days: If the request cannot be processed in 30 working days, the requester must be provided a written notice offering the opportunity to narrow the request so that it can be processed within 30 working days or arrange for an alternative timeframe for completion of processing.

Practice Tip: Set expectations and inform the requester about your best estimate for a response date.

## Processing Time of FOIA Requests

Unusual circumstances are when, pursuant to 40 C.F.R. § 2.104(d), an agency may take an automatic 10 working day extension for:

- “...significant amount of EPA’s resources and time to search for, and appropriately examine the voluminous amount of records to complete this request” and/or
- “...to search for and collect the requested records from multiple EPA offices that are separate from the office processing the request”
- “... the need for consultation with another agency having a substantial interest in the determination of the request”.

A sample letter is available on the [FOIA Intranet site](#).

When you receive a FOIA request, think about whether you will need additional processing time beyond the statutory 20 working days and notify the requester within this legal timeframe. Do not wait! Failure to do so can also preclude the agency from being able to charge fees and enables requesters to go directly to federal district court relief. Regular communication with the requester is crucial to good FOIA processing. Document your calls in the Comments section of FOIAonline. Start early!

When can you stop the clock?

- The clock can be stopped one time while seeking clarification from a requester.
- It can also be stopped as many times as needed for fee-related reasons. This includes when the requester is required to provide an assurance of payment and has failed to do so.
  - If a fee waiver is requested and the requester made a fee commitment of at least \$25.00 you must begin processing the request without stopping the clock waiting for a fee waiver determination from the National FOIA Officer.

Once the request is fully clarified or the fee issue is resolved, the clock should be restarted.

Practice Tip: FOIAonline has a clock in the upper right hand corner which keeps track of how many days have passed since the National FOIA Office perfected the request.

## Tracks of FOIA Requests

FOIA requests are classified in three categories depending on the number of program offices involved, the subject matter(s), the volume of processed records, or the processing time.

- Simple, non-voluminous requests: these requests are generally processed in 20 days or less, have 25 responsive records or less, and involve no more than one program office.
- Complex or voluminous requests: these requests usually need more than 20 days to be processed, involve more than 25 records, and encompass more than one program office.
- Expedited requests: these requests are required to be processed "as soon as practicable". The requester must demonstrate, in writing, that he or she meets the criteria. The statute requires agencies to "make a determination of whether to provide expedited processing" within 10 days.

Practice Tip: Change the track during processing. The Department of Justice monitors performance within each track!

## Knowledge Check

What is the statutory time limit to answer a simple FOIA request?

- A. 10 working days
- B. 30 working days
- C. 3 months
- D. 20 working days

## Requests about Publicly Available Information

Some FOIA requests are for documents that are already available online or through an EPA database. If all of the records are available online, direct the requester to the proper website in your final response letter. This is a full release. These most commonly used databases are:

- EPA's website
- FOIAonline
- MyProperty
- EnviroFacts
- Data.gov
- ECHO
- ChemView

Practice Tip: It may be helpful to figure out if information can be quickly and easily provided to the requester from these sources to prevent follow up requests and questions.

These types of requests can be closed once you respond to the requester and direct them to the specific location where EPA has made the information publicly available.

## FOIAonline: FOIA Workflow, Tracking and Records Repository

FOIAonline is a multi-agency cloud-based application that allows the public to:

- Submit FOIA requests to participating agencies;
- Track the progress of an agency's response to a request;

- Search for information previously made available through FOIA requests that are already closed;
- Generate real time reports on FOIA processing.

For agency users, FOIAonline is a workflow system and repository that enables users to:

- Receive, manage, track, and respond to FOIA requests;
- Generate reports;
- Communicate with requesters;
- Manage FOIA case files in accordance with the record schedule.

FOIAonline is accessible at: <https://www.foiaonline.gov>

## Knowledge Check

The public can use FOIAonline for which of the following purposes?

- A. Search for previously released records from October 1, 2012, to the present.
- B. Submit FOIA requests to participating agencies.
- C. Track the progress of an agency's response to a request.
- D. Generate up-to-the-minute reports on FOIA processing.
- E. All of the above.

## Types of Responses to FOIA Requests

### Interim and Final

Responses to FOIA requests can be either interim or final.

- Interim responses are generally provided in case of complex requests which require searches in multiple locations or involve voluminous records.
- Interim or partial releases demonstrate to requesters that the agency is actively processing their requests and that there is progress.
- Interim responses can be a valuable tool for narrowing requests since these releases provide insight into the types of responsive records and may result in the requester narrowing his or her request or submitting a new request.
- When there is a search for records, final [responses](#) to FOIA requests are usually one of 4 types:
  - 1) Full Grant Response
  - 2) Partial Grant/Denial Response
  - 3) Full Denial Response
  - 4) No Records Response

## Types of Responses to FOIA Requests

### Grant and Denial

- Full Grant Response is when responsive records, in their entirety, are releasable to the requester.
- Partial Grant/Denial Response - Portions of responsive records or some of the responsive records will be withheld under one or multiple FOIA exemptions. For more on FOIA exemptions go to the FY2018 Mandatory FOIA training or [Department of Justice's Guide to the FOIA](#).

- Full Denial is when responsive record(s), in the entirety, will be withheld because they are covered by either one or multiple FOIA exemptions.
- No Records Response is used when a reasonable search is conducted and no responsive records were found. Please provide a comment in FOIAonline or an email to your FOIA Coordinator documenting your search terms and location.

## Knowledge Check

Which one of the following is not a final response to a FOIA request?

- A. Full grant response
- B. Interim response
- C. No records response
- D. Full denial response
- E. Partial grant response

## Training 2019

For additional information please go to the National FOIA Office website at:

<https://www.epa.gov/foia>

Or Intranet site at: <http://intranet.epa.gov/foia/>

Remember – FOIA is everyone's responsibility!

Please notify your manager that you have completed the Text Alternative version of this training.

## Completion Certificates in FedTalent

EPA is making great strides in reducing paper and printer ink usage. The decision was made to make FedTalent, as the Agency learning management system, as paperless as possible.

Once an employee successfully completes a training, that completion is recorded to the employee's Record of Learning. FedTalent's Record of Learning will be used as a record of successful course completion.

To access your Record of Learning:

- 1) Select the My Learning tab, and
- 2) Select Record of Learning from the drop-down menu.

You can export your Record of Learning to .csv, .xlsx, .pdf and other formats.